



Senators Feinstein, Leahy, Pryor to Fight Administration's Effort to Circumvent Senate Confirmation Process for U.S. Attorneys

- *A change in the Patriot Act reauthorization allows Attorney General to appoint interim U.S. Attorneys for indefinite terms when vacancies arise without confirmation;*
- *Feinstein-Leahy-Pryor measure would restore the interim appointment process to District Courts, ensure continuity of Senate confirmation process -*

January 11, 2007

Washington, DC – U.S. Senators Dianne Feinstein (D-Calif.), Patrick Leahy (D-Vt.), and Mark Pryor (D-Ark.) today introduced legislation to prevent circumvention of the Senate's constitutional prerogative to confirm U.S. Attorneys.

"It has come to our attention that the Bush Administration is pushing out U.S. Attorneys from across the country under the cloak of secrecy and then appointing indefinite replacements without Senate confirmation. We know that this is not an isolated occurrence, but we don't know how many U.S. Attorneys have been asked to resign – it could be two, it could be ten, it could be more. No one knows," Senator Feinstein said.

"And, we have no idea why this is happening. The Attorney General could have legitimate reasons for asking for specific resignations, or this could be motivated by political concerns or worse, derailing on-going investigations. Again, we just don't know.

"We believe that this use of expanded executive authority to appoint interim replacements indefinitely undermines essential constitutional checks and balances. It creates unnecessary instability in these offices and has dramatic implications for important cases currently underway. Given all that is going on with this country and the message from the American people this past election, I am surprised that the Administration would pursue a strategy to circumvent the Senate confirmation process and unsettle these important positions.

"U.S. Attorneys around the country are working on public corruption cases, terrorism cases, narcotics and drug trafficking, fighting gangs and violent crime. Which of these cases are impacted by the Attorney General's actions has yet to be determined," Senator Feinstein continued.

“The bottom line is this: U.S. Attorneys are handling major cases that need continuity and leadership. The bill we are introducing today would restore temporary appointment authority to the District Court in which a vacancy arises until a new nominee can be sent to the Senate for confirmation.”

“U.S. Attorneys are the key federal law enforcement officers of their states and hold enormous responsibility for implementing anti-terrorism efforts, prosecuting important and often complex cases, and leading the fight against public corruption,” said Senator Leahy, a former prosecutor. **“Political gerrymandering of these important posts is wrong and an affront to our criminal justice system. It is vital that those holding these critical positions be free from any inappropriate influence and subject to the check and balance of the confirmation process.”**

“Arkansas has learned first hand the unintended consequence of a little known provision in the Patriot Act,” Senator Pryor said. **“Unfortunately, the spirit and intent in which this provision was constructed has been abused and needs to be corrected. It appears that the Administration has chosen to use this provision, which was intended to help protect our nation, to circumvent the transparent Constitutional Senate confirmation process to reward political allies.”**

In a little noticed provision included in the Patriot Act reauthorization last year, the Administration’s authority to appoint interim U.S. Attorneys was greatly expanded. The law was changed so that if a vacancy arises the Attorney General may appoint a replacement for an indefinite period of time – thus completely avoiding the Senate confirmation process.

The authority to fill U.S. Attorney vacancies on an interim basis was first given to the Attorney General in 1986, but the interim position was valid for a period of only 120 days. And prior to 1986, District Courts had the authority to appoint interim U.S. Attorneys when positions became vacant.

Senators Feinstein, Leahy, and Pryor have learned that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions prior to the end of their terms *without cause*. The number of U.S. Attorneys, currently or historically, who have been asked to resign their positions without cause is still unknown.

The measure introduced by Senators Feinstein, Leahy, and Pryor would amend the current statute and restore appointment authority to the District Court within which the vacancy arises.

The following is the letter sent by Senators Feinstein and Leahy to Attorney General Gonzales, announcing their intention to introduce the bill to grant the District Courts appointment authority:

January 9, 2007

The Honorable Alberto Gonzales
U.S. Department of Justice
950 Pennsylvania Ave, NW
Washington, DC 20530

Dear Attorney General Gonzales:

Recently, it has come to our attention that the Department of Justice has asked several U.S. Attorneys from around the country to resign their positions by the end of the month, prior to the end of their terms without cause. We also understand the intention is to have your office appoint interim replacements and potentially avoid the Senate confirmation process altogether.

We are very concerned about this allegation, and we believe, if true, such actions would be intemperate and ill-advised. We have asked our staffs to look into changing the law to prevent such actions and are introducing legislation today that will return the law to its previous language providing a district court with the authority to appoint an interim U.S. Attorney for the district in which a vacancy arises. Therefore, we ask that if such requests have been made that you desist from moving forward with these efforts and hold the requests in abeyance.

As you know, U.S. Attorneys around the country serve important functions bringing many of the most important and difficult cases. Our U.S. Attorneys are responsible for taking the lead on public corruption cases and many of the anti-terrorism efforts across the country. U.S. Attorneys also play a vital role in combating traditional crimes like narcotics trafficking, bank robbery, guns, violence, environmental crime, civil rights violations and fraud. U.S. Attorneys are also taking the lead on prosecuting computer hacking, Internet fraud and intellectual property theft; accounting and securities fraud and computer chip theft. Continuity in these positions is of utmost importance, and freedom from any inappropriate influences or the appearance of influence must be avoided at all costs.

Please provide information regarding all instances in which you have exercised the authority to appoint an interim United States Attorney. In addition, please provide us with information on whether any efforts have been made to ask or encourage the former or current U.S. Attorneys to resign their position.

We would appreciate your prompt attention to this matter and written answers prior to your appearance before the Judiciary Committee on January 18, 2007. Please contact us or Senator Feinstein's chief counsel, Jennifer Duck (202-224-6975), should you have any questions.

Sincerely yours,

Dianne Feinstein
United States Senator

Patrick Leahy
United States Senator